FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7410 OF 2006.

Office Notes,Office Memorandum of Coram apperance,Court's Orders & Directions and Registrar's Order.	: Court or Judge's Order.

Mr.J.M. D'Silva,Advocate for the Petitioner.
Mr.Sanjay Jain with Latif Jain,Advocate for the Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:24TH NOVEMBER, 2006.

1. On oral motion the petition is taken on board.

2. Heard.

3. The petitioner challenges the judgment and order passed by the Small Cause Court in Revision Application No.85 of 2006 was filed against the order passed in R.A.E. Suit No.302/524 of 2002 by the Small Cause Court rejecting the Application filed by the Petitioner under Order VII Rule 11 (d). The contention of the petitioner was

mainly related to issue of limitation as well as the applicability of Order IX Rule 9 to the suit filed by the respondent. Undisputedly, the matter has proceeded beyond filing W.S. and even recording of the evidence. But rejection of the plaint was sought for not only on the basis of a statement in the plaint itself, but also on the basis of the evidence led by the parties. It is well settled law that question of involving powers under Order 7 Rule 11 arises only on the basis of a statement made in the plaint and not on the basis of what has been stated in the Written Statement, leave aside what is recorded in the evidence. Once the parties have proceeded to record the evidence and the defendant seeks the rejection of the plaint not only on the basis of the averments in the plaint, but in addition thereto on the basis of materials placed in the course of evidence, crtainly, no fault would be found in the order of the lower court rejecting application to exercise powers under Order VII Rule 11 of C.P.C. In such circumstances, since

solely on the statement made in the plaint, no such power can be exercised in the facts and circumstances of the case in the hand, I do not find any jurisdictional error committed by the Court below in rejecting the application under Order VII Rule 11 of C.P.C. Hence the petition is rejected.

[R.M.S.KHANDEPARKAR,J.]